LEASE AGREEMENT

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WIERSTATE COMMERCE COMMISSION

THIS LEASE AGREEMENT, made as of this 3rd day of May, 1976, between HARVEY POLLY d/b/a RAILWAY FREIGHT CAR SERVICES, a sole proprietorship, ("HP") as Lessor and COLUMBUS AND GREENVILLE RAILWAY COMPANY, a Mississippi corporation (the "Lessee"), as Lessee:

SCOPE OF AGREEMENT.

- A. HP agrees to lease to Lessee, and Lessee agrees to lease from HP, twenty-five (25) boxcars of the types and descriptions as set forth in any lease schedules executed by the parties concurrently herewith or from time to time hereafter and made a part of this Agreement. The scheduled items of equipment are hereinafter called collectively the "Boxcars". The word "Schedule" as used herein includes the Schedule executed concurrently herewith and all additional Schedules and amendments thereto whether for Boxcars or other railroad equipment, each of which when signed by both parties shall be a part of this Agreement.
- B. It is the intent of the parties of this Agreement that HP shall at all times be and remain the Lessor of all scheduled Boxcars. Lessee agrees that it will at no time take any action or file any documents which is inconsistent with the foregoing intent and that it will take such action and execute

such documents as may be necessary to facilitate accomplishment of this intent.

2. TERM.

- A. This Agreement shall remain in force until all of the Boxcars on lease hereunder shall have been terminated pursuant to Section 9. The term of a lease with respect to each Boxcar shall be for ten (10) years commencing upon the date of delivery of such Boxcar as set forth in Section 3A hereof.
- B. If this Agreement has not been earlier terminated and no default has occurred and is continuing, the lease term with respect to each Boxcar shall be automatically extended for consecutive periods of twelve months; provided, however, that HP or Lessee may by written notice delivered to the other not less than twelve months prior to the end of the initial lease term for any scheduled Boxcar or any specified termination date during the extended lease term, terminate this Agreement.

3. SUPPLY PROVISIONS.

A. HP will inspect each Boxcar tendered by the manufacturer for delivery to Lessee. If the Boxcar conforms to the specifications of the equipment ordered by HP and to all applicable governmental regulatory specifications, HP will accept delivery thereof at the manufacturer's facility in Portland,

Oregon and shall notify Lessee in writing of such acceptance. The Boxcars shall be deemed delivered to Lessee upon acceptance by HP; provided, however, that no delivery shall be deemed to have occurred until this Lease shall have been filed pursuant to Section 20(c) of the Interstate Commerce Act. Lessee shall upon such delivery have the Boxcars loaded and delivered at Lessee's sole expense. Due to the nature of railroad operations in the United States, HP can neither control nor determine if and when the Boxcars leased hereunder will actually be available to Lessee for its use on its railroad tracks. Notwithstanding that Lessee may never have physical possession of any or all of the Boxcars leased hereunder, Lessee agrees to pay to HP the rental charges set forth in this Agreement.

B. Additional Boxcars may be leased from HP to
Lessee only upon the mutual agreement of the parties hereto.
Upon such agreement, such additional Boxcars shall be identified in Schedules to this Agreement and shall benefit from and be subject to this Agreement upon execution of the Schedules by HP and Lessee.

4. RAILROAD MARKINGS AND RECORD KEEPING.

A. HP agrees that on or before delivery of the Boxcars to Lessee, the Boxcars may be lettered, in addition to the logo of HP, with the name or other insignia customarily used by Lessee. Such name or insignia shall comply with all applicable regulations and shall be affixed to the Boxcars in

the space directly above Lessee's reporting marks.

- B. Lessee shall be responsible during the term of this Agreement for preparing all documents relating to the registration, maintenance and record keeping functions with respect to the Boxcars. Such matters shall include but are not limited to the preparation of the following documents:

 (i) registration for each Boxcar in the Official Railway Equipment Register and the Universal Machine Language Equipment Register; and (ii) such reports as may be required from time to time by the ICC and/or other regulatory agencies with respect to the Boxcars.
- C. Each and every Boxcar leased hereunder shall be registered at no cost to HP in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. Lessee shall at its expense, perform all record keeping functions related to the use of the Boxcars by Lessee and other railroads in accordance with AAR railroad interchange agreements such as car hire reconciliation charges.

5. MAINTENANCE, TAXES AND INSURANCE.

A. Lessee will pay all costs, expenses, fees and charges incurred in connection with the use and operation of

each Boxcar during its lease term and any extension thereof, including but not limited to repairs, maintenance and servicing. HP hereby transfers and assigns to Lessee for and during the lease term of each Boxcar all of its right, title and interest in any warranty in respect to the Boxcars. All claims or actions on any warranty so assigned shall be made and prosecuted by Lessee at its sole expense and HP shall have no obligation to make any claim on such warranty. Any recovery under such warranty shall be made payable to Lessee. All proceeds from such recovery shall be used to repair or replace the Boxcars.

B. Lessee shall make or cause to be made such inspections, maintenance and repairs of the Boxcars as may be required. Lessee shall also make all alterations, modifications or replacement of parts as shall be necessary to maintain the Boxcars in good operating condition throughout the term and on termination of the lease of such Boxcars and to comply with the above requirements. Lessee's obligations under this paragraph shall be at Lessee's expense, provided, however, that Lessee shall be allowed up to \$240 per year per Boxcar for repairs and maintenance which are necessary in order to keep the Boxcars in good operating condition. Lessee will submit to Lessor invoices from other railroads for any required repairs and maintenance and invoices covering any work done by Lessee, which in Lessee's case shall be limited to direct labor and materials only. All statements shall be submitted on a monthly basis identifying

the Boxcar or Boxcars involved on an itemized basis setting forth the cost and charges applicable to each unit.

- C. Lessee will at all times while this Agreement is in effect and at its own expense, cause to be carried and maintained insurance in respect of all Boxcars subject hereto, and property damage and public liability insurance in amounts and against risks customarily insured against by railroad companies on similar equipment. Such insurance shall be payable to HP and Lessee as their interests may appear.
- D. Lessee agrees to pay all taxes, assessments and other governmental charges of whatsoever kind or character and by whosoever payable on or relating to each Boxcar and on the lease, delivery or operation thereof which may be accrued, levied, assessed or imposed during the lease term or which remain unpaid as of the date of delivery of such Boxcar to Lessee, except taxes on net income imposed on HP.

6. RENTAL CHARGES.

Lessee agrees to pay on a monthly basis commencing June 15, 1976, a sum equal to 80% of the current I.C.C. rates for per diem, mileage and incentive per diem that the Boxcars would earn that month, if they were off the Lessee's lines. Mileage charges will be calculated on the basis of the cars averaging 50 miles per day.

A Schedule of the current I.C.C. rates are attached. Based on the Boxcar's cost, the current per diem charge is \$10.09 per day, the mileage charge is \$2.13 per day (4.26¢ x 50 miles), and the incentive per diem charge (when applicable) is \$9.74 per day.

Lessee will submit to the Lessor within ninety days after the end of each quarter commencing with the quarter ending May 31, 1976, a statement of the actual Boxcar hire revenues that it has received from other railroads. Lessee shall have the right on reasonable notice during regular business hours to inspect Lessee's records concerning Boxcar Revenue. If the amount exceeds 80% of the total it would have received if the Boxcars had been utilized 100% by other railroads then, HP shall receive 80% of the excess Revenues between 80-85%, 60% of the excess Revenues between 91-95% and 20% of the excess Revenues over 95%. Any amounts which are payable pursuant to the preceding sentence shall be paid promptly with the quarterly report.

7. POSSESSION AND USE.

A. So long as Lessee shall not be in default under this Agreement, Lessee shall be entitled to the possession, use and quiet enjoyment of the Boxcars in accordance with the terms of this Agreement and in the manner and to the extent Boxcars are customarily used in the railroad freight business.

Lessee agrees that to the extent it has physical possession and can control use of the Boxcars, the Boxcars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, except that either HP or Lessee may in good faith and by appropriate proceedings contest the application of any such rules, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or other security interest or claim on or with respect to the Boxcars or any interest therein or in this Agreement or Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrances, security interest, or claim if the same shall arise at any time.

8. DEFAULT REMEDIES UPON DEFAULT.

A. The occurrence of any of the following events shall, at the option of HP, terminate this Agreement and Lessee's right to possession of the Boxcars:

- (i) The nonpayment by Lessee of any sum required to be paid by Lessee within ten days after notice thereof;
- (ii) The default by Lessee under any other term, covenant, or condition of this Agreement which is not cured within ten days after notice thereof from HP.
- (iii) Any affirmative act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.
- (iv) The filing of any involuntary petition under any bankruptcy statute against Lessee that is not dismissed within sixty (60) days thereafter, or the appointment of receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment.
- (v) The subjection of any of Lessee's property to any levy, seizure, assignment, application or sale for or by

any creditor or governmental agency.

- B. Upon the occurrence of any event of default, HP may, at its option, terminate this Agreement and may
- (i) Proceed by appropriate court action to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof (and Lessee agrees to bear HP's costs and expenses, including reasonable attorneys' fees, in securing such enforcement), or
- (ii) By notice in writing to Lessee, terminate
 Lessee's right of possession of the Boxcars, whereupon all
 right and interest of Lessee in the Boxcars shall terminate;
 and thereupon HP may by its agents enter upon any premises
 where the Boxcars may be located and take possession of them
 and henceforth hold, possess and enjoy the same free from any
 right of Lessee. HP shall nevertheless have a right to recover
 from Lessee any and all rental amounts which under the terms
 of this Agreement may then be due or which may have accrued
 to that date.

9. TERMINATION.

At the expiration or termination of this Agreement as to any Boxcars set forth on a Schedule attached hereto,

Lessee will surrender possession of such Boxcars to HP by

delivering the same to HP. The assembling, delivery, storage

and transporting of the Boxcars shall be at the expense and risk of Lessee. A Boxcar shall be deemed terminated and no longer subject to this Agreement upon the removal of Lessee's railroad markings from the Boxcar and the placing thereon of such markings as may be designated by HP, either, at the option of HP, (i) upon delivery of such Boxcars to Lessee's railroad line subsequent to termination of such Boxcar's lease term or (2) removal and replacement of the markings by another railroad line which has physical possession of the Boxcar at the time or subsequent to termination of the lease term as to such Boxcar.

- (i) If such Boxcars are on the railroad line of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five working days remove Lessee's railroad markings from the Boxcars and place thereon such markings as may be designated by HP. After the removal and replacement of markings, Lessee shall use its best efforts to load such Boxcars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide up to ninety days free storage on its railroad tracks for HP or the subsequent lessee of any terminated Boxcar.
- (ii) If such Boxcars are not on the railroad line of Lessee upon termination, all costs of assembling, delivering,

storing, and transporting such Boxcars to Lessee's railroad line or the railroad line of a subsequent lessee shall be borne by Lessee.

10. INDEMNITIES.

Lessee will defend, indemnify and hold harmless from and against (1) any and all loss or damage of or to the Boxcars, usual wear and tear excepted, and (2) any claim, cause of action, damage, liability, cost or expense (including legal fees and costs) to which the Boxcars may be subject or which may be incurred in any manner by or for the account of any such Boxcar relating to the Boxcars or any part thereof.

11. WARRANTIES AND COVENANTS.

Lessee represents, warrants and covenants that:

- (i) Lessee is a corporation duly organized and validly existing in good standing under the laws of the State of Mississippi and has the corporate power and authority, is duly qualified and authorized to do business wherever necessary, to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.
- (ii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of,

or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Boxcars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

- (iii) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.
- (iv) There is no fact which Lessee has not disclosed to HP in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which individually or in the aggregate will materially adversely affect nor, so far as the Lessee can now reasonably foresee, will materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement.

12. CONDITIONS PRECEDENT TO EXECUTION OF SUBSEQUENT LEASE SCHEDULES.

A. No change shall have occurred after the date of this Agreement in applicable law or regulations thereunder or

admistrative interpretations thereof which would make it illegal for the parties to enter into this Agreement or any Schedule hereto.

B. There shall exist no event of default,

13. INSPECTION.

HP shall at any time during normal business hours have the right to enter the premises where the Boxcars may be located for the purpose of inspecting and examining the Boxcars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify HP of any accident connected with the malfunctioning or operation of the Boxcars including in such report, the time, place and nature of the accident and the damage caused to property, the names and addresses of any persons injured and of witnesses and other information pertinent to Lessee's investigation of the accident. Lessee shall also notify HP in writing within five (5) days after any attachment, tax lien or other judicial process shall attach to any Boxcar. Lessee shall furnish to HP promptly upon its becoming available, a copy of its annual report submitted to the ICC and, when requested, copies of any other income or balance sheet statements required to be submitted to the ICC. Lessee shall also furnish to HP within 30 days after the end of each quarter, unaudited financial statements and within 60 days after each fiscal year a certified balance sheet and income statement.

14. NOTICES.

All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States Mail, postage prepaid, certified or registered, addressed to Lessor: c/or Messrs. Weiss, Rothfarb, Kaminsky & Slade, 6 East 43rd Street, New York, New York 10017 and to Lessee:

15. GOVERNING LAW.

This Agreement shall be governed by and construed according to the laws of the State of Florida.

16. MISCELLANEOUS.

A. This Agreement and the Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of HP assign this Agreement or any of its rights hereunder or sublease the Boxcars to any party, and any proposed assignment or sublease in violation hereof shall be void.

HP (or its assignee) shall have the unqualified right at any time or times to assign, transfer and set over to any person, firm or corporation all of its rights under this Agreement outright (or as security for indebtedness of HP under a conditional sale agreement with respect to the Boxcars) or other-

wise and upon any such assignment all rights of every nature and kind of HP (or its assignee) hereunder shall inure to the benefit of any such assignee.

- B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of this Agreement.
- C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Boxcars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Boxcars except as a lessee only.
- D. Failure or delay by HP shall not constitute a waiver or otherwise affect or impair any right, power or remedy available to HP nor shall any waiver or indulgence by HP or any partial or single exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the year and date first above written.

RAILWAY FREIGHT CAR SERVICES

BY

ATTEST:

(Corporate Seal)

BY Chaig 6. A

COLUMBUS AND GREENVILLE RAILWAY COMPAN

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STATE OF MISSISSIPPI) county of LOWNDES) ss.:

On this 14th day of May, 1976, before me personally appeared Craig E. Burroughs to me known, who being by me duly sworn, says that he is the President Columbus and Greenville Railway Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Derock H Dale

of

My Commission Expires Nov. 17th, 1979,

STATE OF New York) ss.:

On this / ℓ day of May, 1976, before me personally came Harvey Polly, to me known and known to me to be the person doing business as the firm of Railway Freight Car Services and the person described in and who executed the foregoing instrument in the firm name of Railway Freight Car Services and he duly acknowledged to me that he executed the same as and for the act and deed of said firm of Railway Freight Car Services.

Joan Vietorie Lelquer

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EQUIPMENT SCHEDULE

A.A.R. Mech. Desig.	DESCRIPTION	NUMBERS	OTHER DATA	DOOR NO. WIDTH DF CARS
XM	50'-6" 70 ton single sheath Box Cars with end of car cushioning and steel floors	19100-19124	Length- 50'-6'' Width- 9'-6'' Height- 11'-2''	101 25

	By:	•
President		
	DATE:	•

•	Line	Cast	Group A	- Group B	Group C	Group D	Group E	Group F	Group G
	No.		.0-5 Years.	6-10 Years	11-15 Years	16-20 Years	21-25 Years	26-30 Years	· Over 30 Years
		(1)。 (1)。 (1)。	(2) (2)	(3)	(4)	(5)	(6)	(7)	(8)
7	1 5 5 0	1,00		\$ 0. 27	\$ 0.22	\$ 0.17	\$ 0.11	\$ 0.06	., \$0.04
	2 :- : 1	3,000	0.65	0.54	0.44	0.23	0, 23	0:12	0.07
Ş.	3: 3:/3	~ ("S, 000°	1:30	1.09		0.67	0.46	0.25	0.14
A -5	4. 5	7,000:	1.95	. 1.63	1.32	1.00	0.63	0.37	0.21
•	. 5 . 7	9,000	2.60	2,18	1.75	1.33	0.91	0.49	0.28
		- 11. CCO	3, 25	2,72	2,19	1.67	1.14	0.61	0.35
•	7 . 11.	13,000	3.90	3. 26		2.00	1.37	- 0.74	0.42
•	8 13	- 15,000	4.54	3,81	3.07	2.33	1.60	• 0.86	0.49
	9 · · 15	- 17,000	5.19	4, 35	3.51	2.67	1.82	0.98	0.56
	10 17	- 19,000.	5. 84 -	4.89	3.95 1,	3.00	2.05	1111	0.63
	11 . 19	- 21,000	6:49	5.44	439	<u> 3.33</u>	2, 28	1.23	0.70
	12. 21	- 23,000	7.14	5.98	4,82	3.67	2.51	. I.35	0.77
	13 23	- 25; 000	7.79	6. 53	5. 26	4.00	2.74	1.47	0.84
		~ 27,000	8.44	7.07	5.70	4.33	2, 96	1.60	0.91
يبرد		- 29,000	9.09	7.61	6.14	4.67	3.19	1:72	0.58
		- 31,000	9.74	8.16	6.58	5.00	3,42	.1.84	. 1.05
	31	- 33,000	.10.39.	8.70	7.02	5.33	3.65	1.95	1.12 : 1
	18 . 33	- 35,000	11.01	9.24	7.46	5.67	• . 3.88	2.09	1.19
. •	19 35	- 37,000	11.69	9.79	7.69	6.00	4.10	2,21	1, 26
•		- 37,000	12.33	10.33	8.33	6.33	4.33	2, 33	1.33
•	• •	- 11,000	12.98	10.88	8.77	6.67	4.56	2.46	1.40

⁽a) (3) The Code of Cur Hire Rules will apply, to such incentive per diem charges in the same manner and with the -same effect as they do to car hire charges (see Note). Penalty as described in Rule 1 (a) (1) will also apply to incentive per diem.

Note: Ex Parte 252, Sub. No. 1, Appendix B - Mexican caned cars are exempt from the application of incentive per

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11-13

14-70

21-75

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24-30

wi.

dollars only

Charge Charge per line-haul mile represents 50 percent of everage annual maintenance cost per our plus 40 percent of annual depreciation allowance (at 1 percent of original cost) divided by average annual car milesqu in study period (17,832 miles per car), except that charge for tare over 30 years of age includes no depreciation allowance.

willy time charge represents 10 percent of average annual maintenance cost per car plus in-vestment costs from Table 8 (less depreciation included in mileage charge) divided by average per diem days payable per car in study period (141 days).